

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DONALD ELLIOTT, JR.,

Plaintiff,

-v-

NESTLE WATERS NORTH AMERICA INC.,

Defendant.
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USDC-SDNY
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ELECTRONICALLY FILED

DOC #:

DATE FILED: 5/6/14

No. 13 Civ. 6331 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

Plaintiff *pro se* Donald Elliott filed his Complaint in New York Supreme Court for the County of New York on July 26, 2013, asserting a variety of claims related to Defendant Nestle Waters North America Inc.'s termination of his employment. Defendant timely removed the case to this Court on September 10, 2013, and six days later filed a motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(6). On January 9, 2014, the Court referred the motion to Magistrate Judge Sarah Netburn for a Report and Recommendation, which Judge Netburn issued on February 6, 2014.

In reviewing a Report and Recommendation, a District Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The Court must "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* When neither party has filed an objection, the Court reviews the Report and Recommendation for clear error. Maslin v. Comm'r of Soc. Sec., No. 11-cv-8709(JPO), 2014 WL 1395017, at *1 (S.D.N.Y. Apr. 10, 2014).

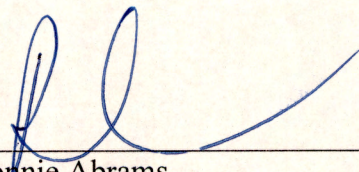
Here, although the Report and Recommendation provided that the “parties shall have fourteen days from the service of this Report and Recommendation to file written objections” (Report and Recommendation at 26), neither party has filed an objection. Accordingly, the Court reviews the Report and Recommendation for clear error and, after careful review of the record, finds none. Judge Netburn’s Report and Recommendation is therefore adopted in its entirety.

Defendant’s motion to dismiss is GRANTED. Plaintiff’s claims are dismissed with prejudice, except for his claim asserting breach of an implied employment contract, which Plaintiff is granted leave to amend. If Plaintiff can allege the elements of this claim in good faith (see Report and Recommendation at 19-21), and chooses to submit an Amended Complaint, he must do so by July 7, 2014. Otherwise, the case will be closed.

The Clerk of Court is respectfully requested to close the motion pending at docket number 3.

SO ORDERED.

Dated: May 6, 2014
New York, New York



Ronnie Abrams
United States District Judge